

vzbv brings legal action in connection with the VW diesel scandal

Questions and answers about the claim against an authorised Volkswagen (VW) dealer

What is vzbv's claim about?

A VW customer whose diesel vehicle was affected by the emissions scandal has assigned his claim against an authorised VW dealer to reimbursement of the purchase price to the Federation of German Consumer Organisations (Verbraucherzentrale Bundesverband – vzbv). vzbv is suing the dealer for a refund of the purchasing price, less a sum for the use of the car. In return, the vehicle owner would hand the vehicle back. If the court rules in favour of vzbv in the third-party debt-recovery action, the consumer will get the money awarded by the court.

What does vzbv hope to achieve with the action against a VW dealer?

In this specific case, the consumer – acting on the advice of vzbv – had asked his dealer to provide a guarantee and be liable in the event that the retrofit solution offered by Volkswagen caused damage to his vehicle. Volkswagen had already given vzbv a far-reaching 'guarantee' (see <https://www.vzbv.de/pressemitteilung/diesel-skandal-vw-legt-sich-auf-motorhaltbarkeit-fest>). However, the dealership refused to provide either the requested warranty or a replacement vehicle. vzbv believes this entitles the consumer to rescind the purchasing agreement.

This case addresses a fundamental, yet unresolved, point of law: Can consumers claim they cannot reasonably be expected to accept a retrofitting solution if there are legitimate concerns about the technical fix being offered and the seller is not prepared to accept liability for any adverse effects? A positive outcome would be extremely important for consumer rights and for the law governing legal guarantees as a whole.

How might this case benefit other consumers?

The action should provide clarity for consumers as to when they can rescind a contract and when a repair or other remedy can be rejected as unreasonable. However, it is likely to be a few years before the case is finally decided. VW customers who want to rescind their purchasing agreement for the same reason can use vzbv's argument. Consumers bringing actions after the end of 2018, however, can expect the defendant to argue that the action has been brought to late and that the period during which claims can be made has expired (statute of limitations).

What would you advise other consumers in a similar position to do?

Legal guarantee claims and claims for compensation are subject to different limitation periods: <https://www.vzbv.de/pressemitteilung/volkswagen-spielt-auf-zeit>. vzbv urgently advises consumers to obtain legal advice. The consumer associations (Verbraucherzentralen) provide information but in a legal dispute consumers should seek advice from a lawyer.

Why isn't vzbv bringing legal action directly against VW in connection with the emissions scandal?

A claim for rescission of the purchase agreement can only be made against the seller of the vehicle. vzbv publicly called on Volkswagen to give a comprehensive and legally binding guarantee for all consumers and VW gave vzbv an assurance that the technical fix would not harm the durability of the engines concerned. However, vzbv has asked for more far-reaching guarantees. The question of the individual enforceability and scope of such a guarantee now have to be tested in court. This is what the action against the authorised dealer is intended to achieve.

How does a third-party debt-recovery action work?

Since 2002, consumers have had the right to assign payment claims against companies to the local consumer associations (Verbraucherzentralen) or to the national consumer organisation (vzbv) who can pursue the claims in court. If the claims are successful, the consumers concerned receive the money recovered. The consumer organisation in charge covers the legal costs if the courts find in favour of the defendant.

Is the third-party debt-recovery action a suitable instrument for claims affecting large numbers of people?

No, the third-party debt-recovery action (*Einziehungsklage*) is relatively expensive and time-consuming. The organisation bringing the action has to conclude an assignment agreement with each individual consumer and inform them of their personal rights. As the purpose of these claims is always to obtain payment, the sums owed must be assessed and substantiated in each individual case. However, the amounts may vary widely even if all cases are based on the same consumer-harming business practices. vzbv is calling for a simpler procedure that would help consumers obtain a remedy more easily in cases where there are large numbers of consumers harmed and thus a large number of potential claimants. A model case procedure would enable key questions of law to be clarified in a single case, instead of in lots of individual cases. This would benefit consumers, businesses, and the courts.

Has vzbv already used this form of action in other cases?

So far, vzbv has only used the third-party debt-recovery procedure for individual claims or those involving a limited number of claimants. Our primary aim was to clarify fundamental points of law for the benefit of all consumers. One case concerned the question of whether retailers could demand compensation for use of a defective product if it was exchanged within the statutory legal guarantee period. After referring the case to the European Court of Justice, the German Supreme Court ruled in favour of the consumer. The defendant company had to repay her the money it had unfairly withheld. All other consumers benefited from the subsequent change to the law.